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# PUBLIC NOTICE



FEDERAL COMMUNICATIONS COMMISSION

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## Proposed First Quarter 2000 Universal Service Contribution Factor

CC Docket No. 96-45

In this Public Notice, the Common Carrier Bureau announces the proposed universal service contribution factor for the first quarter of 2000.<sup>1</sup>

### Fifth Circuit Decision and Revised Rules for Calculating the Contribution Factor

On July 30, 1999, a three-judge panel of the United States Court of Appeals for the Fifth Circuit (Fifth Circuit) issued an opinion in *Texas Office of Public Utility Counsel v. FCC*.<sup>2</sup> In that opinion, the Fifth Circuit affirmed in part, reversed in part, and remanded in part the Commission's *Universal Service Order*.<sup>3</sup> Among other things, the Fifth Circuit ruled on two issues regarding the assessment of universal service contributions. Specifically, the Fifth Circuit: (1) reversed the Commission's decision to assess contributions based on the intrastate revenues of universal service contributors;<sup>4</sup> and (2) reversed and remanded for further consideration the Commission's decision to assess contributions based on the international revenues of contributors having interstate revenues.<sup>5</sup>

In response to the court's rulings, the Commission adopted an order on October 8, 1999 that amended its contribution rules.<sup>6</sup> Specifically, the Commission removed intrastate revenues from the contribution base, so that universal service contributions are now calculated using a single contribution factor based on interstate and international end-user telecommunications

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<sup>1</sup> See 47 C.F.R. § 54.709(a).

<sup>2</sup> *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).

<sup>3</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Erratum, FCC 97-157 (rel. June 4, 1997), *aff'd in part, rev'd in part, remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *motion for stay granted in part*, No. 97-60421 (Sept. 28, 1999), *petitions for rehearing and rehearing en banc denied*, No. 97-60421 (Sept. 28, 1999) (*Universal Service Order*).

<sup>4</sup> *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 448.

<sup>5</sup> *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 435.

<sup>6</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform*, CC Docket No. 96-262, Sixteenth Order on Reconsideration in CC Docket No. 96-45, Eighth Report and Order in CC Docket No. 96-45, Sixth Report and Order in CC Docket No. 96-262, FCC 99-290 (rel. Oct. 8, 1999) (*Universal Service Remand Order*).

revenues.<sup>7</sup> The Commission also exempted from the contribution base the international revenues of interstate carriers whose interstate revenues account for less than 8 percent of their combined interstate and international revenues.<sup>8</sup>

### **USAC Projections of Demand and Administrative Expenses**

Pursuant to section 54.709(a)(3) of the Commission's rules,<sup>9</sup> the Universal Service Administrative Company (USAC) submitted the following projections of demand and administrative expenses for the first quarter of 2000:<sup>10</sup>

(\$ millions)

| Program               | Projected Program Support | Admin. Expenses | Application of Balance From Prior Period | Application of Interest Income | Application of Periodic True-Ups | Total Program Collection |
|-----------------------|---------------------------|-----------------|--|--------------------------------|----------------------------------|--------------------------|
| Schools and Libraries | 552.710                   | 9.790           | (57.250)                                 | (6.914)                        | (6.423)                          | 491.913                  |
| Rural Health Care     | 2.230                     | 0.770           | (0.000)                                  | (0.042)                        | (0.458)                          | 2.500                    |
| High-Cost             | 498.126                   | 1.001           | (0.000)                                  | (0.600)                        | (3.314)                          | 495.213                  |
| Low Income            | 128.708                   | 0.316           | (0.000)                                  | (0.530)                        | (4.117)                          | 124.377                  |
| <b>TOTAL</b>          | <b>1181.774</b>           | <b>11.877</b>   | <b>(57.250)</b>                          | <b>(8.086)</b>                 | <b>(14.312)</b>                  | <b>1114.003</b>          |

USAC reports that, based on current data, it does not believe that it will need to disburse the full amount of funds that it was authorized to collect for the first year of the schools and libraries program.<sup>11</sup> Specifically, USAC estimates that the schools and libraries program will have an unused balance of approximately \$229 million after all disbursements related to the first

<sup>7</sup> *Universal Service Remand Order*, FCC 99-290 at paras. 15, 17.

<sup>8</sup> *Universal Service Remand Order*, FCC 99-290 at paras. 15, 19-29. The Commission recognized that, because providers report their interstate and international end-user telecommunications revenues as a combined amount on the Telecommunications Reporting Worksheet (FCC Form 499) and its predecessor, the Universal Service Worksheet (FCC Form 457), the Commission did not have revenue data that distinguish contributors' interstate and international revenues. *Universal Service Remand Order*, FCC 99-290 at para. 27. Accordingly, the Commission required carriers that qualify for the limited international exception to file amendments to their March 1999 Form 457 and September 1999 Form 499-S on or before December 1, 1999. As discussed *infra*, based on the amendments filed with USAC to date, USAC estimates that approximately \$59.041 million will be excluded from the revenue base as a result of the limited international exception. Federal Universal Service Programs Revisions to Contribution Base and Program Demand for the First Quarter of 2000 at 5 (filed Dec. 7, 1999).

<sup>9</sup> 47 C.F.R. § 54.709(a)(3).

<sup>10</sup> Federal Universal Service Programs Fund Size Projections & Contribution Base For the First Quarter 2000 (filed Nov. 2, 1999); Federal Universal Service Programs Revisions to Contribution Base and Program Demand for the First Quarter of 2000; Federal Universal Service Programs Fund Size Projections & Contribution Base For the First Quarter 2000, Amended Exhibit 1 (filed Dec. 10, 1999).

<sup>11</sup> Federal Universal Service Programs Fund Size Projections & Contribution Base For the First Quarter 2000 at 20; Federal Universal Service Programs Revisions to Contribution Base and Program Demand for the First Quarter of 2000 at 4.

program year have been made.<sup>12</sup> According to USAC, this remaining balance will occur because: (1) although USAC has made funding commitments to certain schools and libraries, it has received no indication that the services requested have been or will be provided; (2) some schools and libraries ultimately may use only a portion of the funds committed to them; and (3) a portion of the funds reserved to pay for successful appeals of funding denials is not likely to be needed.<sup>13</sup> We anticipate that USAC will be able to determine the actual amount of the unused balance in March 2000.

We direct USAC to apply one-quarter of the estimated unused balance to reduce the collection requirement for the schools and libraries program in the first quarter of 2000. This action is consistent with Commission rules and precedent directing that unused contributions be credited back to contributors.<sup>14</sup> Specifically, at the end of the fourth quarter of 1998, the rural health care program had a balance of approximately \$86 million because collections accrued faster than actual demand for program support.<sup>15</sup> To ensure that unused collections were credited back to contributors, the Commission directed that the unused balance be applied over two quarters to reduce the contribution factors.<sup>16</sup> Because the unused balance projected for the schools and libraries program is an estimate at this time, however, we find that it would be prudent to apply only one-quarter of the estimated unused balance to reduce the contribution factor in the first quarter of 2000. When USAC files its projections of program demand and administrative expenses for the second quarter of 2000, it shall supply an updated estimate of the remaining balance that may be applied to reduce the collection requirement for the schools and libraries program in subsequent quarters of 2000.

### **USAC Projections of Industry Revenues**

USAC submitted estimated end-user telecommunications revenues for January through June 2000 based on information contained in the September 1999 Telecommunications Reporting Worksheet (FCC Form 499-S).<sup>17</sup> The amount is as follows:

Total Interstate and International End-User Telecommunications Revenues  
from January 1, 1999 - June 30, 1999: \$38.352364 billion

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<sup>12</sup> Federal Universal Service Programs Revisions to Contribution Base and Program Demand for the First Quarter of 2000 at 4.

<sup>13</sup> Federal Universal Service Programs Fund Size Projections & Contribution Base For the First Quarter 2000 at 20; Federal Universal Service Programs Revisions to Contribution Base and Program Demand for the First Quarter of 2000 at 4.

<sup>14</sup> See 47 C.F.R. § 54.507; *Proposed First Quarter 1999 Universal Service Contribution Factors and Proposed Actions*, CC Docket No. 96-45, Public Notice, FCC 98-318 (rel. Dec. 4, 1998) (*Proposed First Quarter 1999 Universal Service Contribution Factors*).

<sup>15</sup> *Proposed First Quarter 1999 Universal Service Contribution Factors*, FCC 98-318 at 3.

<sup>16</sup> *Proposed First Quarter 1999 Universal Service Contribution Factors*, FCC 98-318 at 4.

<sup>17</sup> Federal Universal Service Programs Fund Size Projections & Contribution Base For the First Quarter 2000 at 29-30. The revenues on which contributions are assessed in the first and second quarters of 2000 are the revenues reported on the September 1999 Worksheet for the period from January through June 1999.

### **Contribution Base**

To determine the quarterly contribution base, we first reduce the six-month estimate of interstate and international end-user telecommunications revenues by the projected amount that will be exempted from the contribution base as a result of the limited international exception.<sup>18</sup> Next, we estimate quarterly revenues by dividing the resulting six-month revenue estimate by two. Then, we decrease the revenue estimate by one percent to account for uncollectible contributions.<sup>19</sup> Accordingly, the contribution base for the first quarter of 2000 is as follows:

Quarterly Contribution Base for Universal Service Support Mechanisms

((Interstate and International - International Exception) / 2) - Uncollectibles

(\$38.352364 billion - \$0.059041 billion / 2) - 1%

\$18.955195 billion

### **Proposed Contribution Factor**

Using this quarterly contribution base, and the total program collection requirement from the table above, the proposed contribution factor for the first quarter of 2000 is as follows:

Contribution Factor for Universal Service Support Mechanisms

Total Program Collection / Contribution Base

\$1.114003 billion / \$18.955195 billion

**0.058770**

If the Commission takes no action regarding the proposed contribution factor within the 14-day period following release of this Public Notice, the contribution factor shall be deemed approved by the Commission.<sup>20</sup> USAC shall then use the contribution factor to calculate universal service contributions for the first quarter of 2000.

For further information, contact Jack Zinman, Accounting Policy Division, Common Carrier Bureau, at (202) 418-7400.

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<sup>18</sup> See *supra* note 8.

<sup>19</sup> See Federal Universal Service Programs Fund Size Projections & Contribution Base For the First Quarter 2000 at 30.

<sup>20</sup> See 47 U.S.C. § 54.709(a)(3).

**SEPARATE STATEMENT OF  
COMMISSIONER HAROLD FURCHTGOTT-ROTH**

*Re: Proposed First Quarter 2000 Universal Service Contribution Factor Announced in CC Docket 96-45.*

I cannot endorse the Common Carrier Bureau's proposed universal service contribution factor for the first quarter of 2000. The Commission continues to expand its universal service programs to astronomical proportions, and there seems to be no end in sight. Ratepayers are the losers here, since they wind up paying for the Commission's bloated universal service project in their phone bills. Many aspects of the Commission's implementation of the 1996 Act's universal service provisions trouble me, and I note some of those concerns here.

First, as I have observed many times, the schools and libraries program has ballooned into something Congress never envisioned, and it continues to grow. The Bureau projects that the program will require an astounding \$552 million for the first quarter alone, with administrative expenses of an additional \$9.8 million. These figures represent a nearly 42% increase from the first quarter of 1999, when the Bureau allocated around \$320 million to the program. In addition, the expenses associated with administering this program are nearly 10 times higher than those for any of the other universal service programs. In my opinion, these expenses are excessive, and I cannot understand why there is such a tremendous disparity between the costs of operating the schools and libraries program and those associated with other universal service programs.

Second, the overall size of the universal service program has shot up by around 24% since the first quarter of 1999. Last December, the Bureau estimated that the total demand for its universal service programs would be \$903 million in the first quarter of 1999. Now, it says that \$1.181 billion is required.

Finally, I think it is worth noting that the way that consumers will pay for these expensive ventures has changed fundamentally in the past year. As a result of the Fifth Circuit's decision last July, the Commission may no longer include intrastate revenues in the universal service contribution base, and universal service contributions are now assessed only on carriers' interstate and international end-user telecommunications revenues. In simple terms, this means that long-distance and wireless carriers will wind up shouldering more of the burden for universal service (contributing nearly 6% of their interstate and international end-user telecommunications revenues to the program), and local exchange carriers will pay less. These companies will pass their increased costs along to consumers, who will pay significantly more for long-distance and wireless services. *See Jerry Hausman, Taxation by*

*Telecommunications Regulation*, Working Paper/National Bureau of Economic Research (Nov. 1997). The burden on traditional long-distance companies may turn out to be especially severe, given the emergence of the Internet as an unregulated alternative to traditional circuit-switched calling. Consumers unwilling to pay artificially high long-distance bills may begin opting for the new medium of the Internet. Even in the short term, therefore, the Commission's method of collecting support for its universal service programs may well be unsustainable.